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When National Territory is Home to the Global: Old Borders to Novel Borderings

SASKIA SASSEN

One angle into the question of national territory, at a time of global and digital capabilities, is the border. It is one of the critical national institutions that those capabilities can unsettle and even neutralise. Borders, in turn, bring up the national state as the key historic actor shaped partly by the struggle about and institutionalising of territorial borders. The globalisation of a broad range of processes is producing ruptures in the mosaic of border regimes underlying the international system of exclusive territorial demarcations. There is much disagreement about the effect of these global and digital capabilities on state territorial jurisdictions, with some seeing much and others little real change.¹ But both sides of the debate tend to share one assumption, often implicit: the territorial exclusivity of the nation-state which makes of the border a line that divides the national and the global into two mutually exclusive domains.

And yet, the changes under way are shifting the meaning of borders, even when the actual geographic lines that demarcate territories have not been altered. Perhaps more importantly, these changes are contributing to the formation of new types of borders. Such changed meanings and new types of borders make legible the fact that bordering takes place in far more sites than geographic borderlines and their linked institutions, such as consulates and airport immigration controls. And they make legible the extent of state capture in the historiography and geography covering the geopolitics of the last two centuries, an issue that has received considerable attention in the last few years.²

The organising argument in this article is that we are seeing the incipient formation of a type of bordering capability and state practice regarding its territory that entail a partial denationalising of what has been constructed historically as national and hence an unsettling of the meaning of geographic borders. Critical to this argument is the thesis that global processes also take place at subnational levels,³ hereby disrupting the notion of mutually exclusive domains for the national and the global. Much attention in the scholarship has gone to the loss of functions by states to supranational, global and private entities.⁴ Much less attention has gone to the thesis that state territorial authority is being affected

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by the proliferation of subnational scalings of global processes and institutions. When we conceive of globalisation as partly enacted at various subnational scales and institutional domains we can posit the possibility of a proliferation of borderings inside national territories. The thesis organising this article is that economic globalisation is in fact a politico-economic system partly located inside national states; as a result, we see: a) a partial, often highly specialised and hence obscure, denationalising of specific components of state work, the economy, society and the polity; and b) that the specialised transnational regimes being implemented to govern global processes also enter national institutional space and geographic territory,⁵ and that both of these dynamics (a and b) produce a variety of novel borderings inside national territory which often can function in ways unaffected by the continuing geographic demarcation of state territories.⁶ A focus on such bordering capabilities allows us to see something about territory and space that is easily obscured in the more prevalent analyses which assume the mutual exclusivity of the national and the global.

First, I will examine the main lines of the debate about the state and the question of borders and exclusive territorial authority. Next, I will examine the question of global processes at the subnational level to get at the thesis that concerns me here: the partial unbundling of traditional territorial national borders and the formation of new bordering capabilities.⁷ Finally, I will discuss borders and new bordering capabilities and the kinds of theoretical and research issues they bring to the scholarly agenda.

National territories and global processes

There have been many epochs when territories were subject to several systems of rule. In this regard the current condition we see developing with globalisation is probably by far the more common one and the more exceptional period is the one that has seen the strengthening of the national state. The gradual institutional tightening of the national state's exclusive authority over its territory took off particularly after the First World War in most of the developed countries. So did the elaboration of the categories for analysis, research techniques and data-sets in the social sciences that refined the national state perspective. Accommodating the possibility of multiple relations between territory and institutional encasement, rather than the singular one of national territory and sovereign rule, requires theoretical and empirical specifications – a collective task well under way.

The multiple regimes that constitute the border as an institution can be grouped into a formalised apparatus that is part of the interstate system. The first has at its core the body of regulations covering a variety of international flows – flows of different types of commodities, capital, people, services and information. No matter their variety, these multiple regimes tend to cohere around: a) the state's unilateral authority to define and enforce regulations, and b) the state's obligation to respect and uphold the regulations coming out of the international treaty system or out of bilateral arrangements.⁸ While never fully effective, today this formalised apparatus is not only partly being unbundled, but also confronts an emerging, still far less formalised, array of novel types of borderings lying largely outside the framing of the interstate system. Further, this emergent array of borderings does

not necessarily entail a self-evident crossing of borders; it includes a range of dynamics arising out of specific contemporary developments, notably emergent global law systems and a growing range of globally networked digital interactive domains.

The national state capture in these modes of analysis has had the effect of simplifying the question of the border: the border is largely reduced to a geographic event and the immediate institutional apparatus through which it is controlled, protected and generally governed. What globalisation brings to this condition is the actual and heuristic disaggregating of 'the border' typically represented as a unitary condition in policy discourse and making legible its multiple components. The globalisation of a broad range of processes shows us that the 'border' can extend deep into national territory and is constituted through many more institutions and has many more locations than is suggested by standard representations. These globalising processes also help make legible the features and the conditionalities of what has been the dominant border regime, associated with the nation-state, which though still the prevalent border regime of our times is now less so than it was even 15 years ago.

Globalisation thus engages the territory of the state, and thereby inevitably the question of state borders. One of the critical literatures for these issues and the main lines of debate, even when not directly addressed, is that of the state and globalisation. In many ways the issues that concern me here are addressed indirectly or obliquely, because the framing in the literature is rather more like a tug of war given assumptions of mutual exclusivity – what one wins, the other loses. For the purposes of this article it is worth examining the assumptions that are made on each side of the debate, even when the actual question of the border is often not central. To repeat, most marked is the fact that both sides basically take for given the fact of the border as demarcating mutual exclusivity.

This scholarship is large and growing, and by now increasingly familiar. Very briefly, and simplifying, we can identify two major strands. For some, states remain as the key actors and hence not much has changed for states and the inter-state system, each state enjoying mutually recognised territorial borders.⁹ For others, even if states remain important there are today other key actors who are accumulating rights and powers to cross those borders.¹⁰ Some see these as new actors; others do not and rather emphasise the weakening of their powers alongside the strengthening of national states over the last 100 years.¹¹ Even if we accept that the present era is, at a very general level, a continuation of a long history of changes that have not altered the fundamental fact of state primacy, it still demands detailed research about the specificities of the current changes.

Focusing on the formation of novel bordering capabilities brings to the fore particular aspects of territory and space that are easily overlooked.¹² Unlike analyses of private authority which emphasise the shift out of the public domain and into the private domain,¹³ no doubt a critical dimension,¹⁴ here I seek to detect the presence of private agendas and authority inside the public domain of the state.¹⁵ This can go further to an emphasis on the privatisation of norm-making capacities: these capacities were once in the public domain, but today they have become private and use the public domain to enact private norms.¹⁶ This perspective thus also differs from a literature that emphasises the decline and obsolescence

of the state.¹⁷ It comes close to the scholarship that emphasises state transformations,¹⁸ even though this literature tends to discard the specificity of the current phase of globalisation.¹⁹

One of my efforts here is, then, to blur some longstanding dualities in state scholarship, notably, those concerning the distinctive spheres of influence of respectively the national and the global, of state and non-state actors, and of the private and the public.²⁰ While it may indeed be the case that mostly the two sides of the duality are separate and mutually exclusive, I argue for the critical importance of recognising and deciphering conditions or components that do not fit in this dual structure. Borders and novel bordering capacities then function as a heuristic to detect deeper transformations.²¹ An important methodological assumption here is that focusing on economic globalisation can help us disentangle some of these issues precisely because, in strengthening the legitimacy of claims by foreign investors and firms and the legitimate authority of international regimes inside the country, it renders visible the work of accommodating these rights and authorities in what remain basically national economies and national polities.²²

The embeddedness of the global requires at least a partial lifting of national encasements and hence signals a necessary participation by the state, even when it concerns the state's own withdrawal from regulating the economy. Does the weight of private, often foreign, interests in this specific work of the state become constitutive of a particular form of state authority that does not replace but works alongside older well-established forms of state authority?²³ My argument is that the mix of processes we describe as globalisation is indeed producing, deep inside the national state, a very partial but significant form of authority, a hybrid that is neither fully private nor fully public, neither fully national nor fully global.²⁴

As states participate in the implementation of cross border regimes, whether the global economic system or the international human rights regime, they have undergone at times significant transformations because this accommodation entails a negotiation. In the case of the global economy, this negotiation entails the development inside national states – through legislative acts, court rulings, executive orders, policy – of the mechanisms necessary for the reconstitution of certain components of national capital into 'global capital', and necessary to develop and ensure new types of rights/entitlements for foreign capital²⁵ in what are still national territories in principle under the exclusive authority of their states.²⁶

National borders and subnational scalings of the global

As particular components of national states become the institutional home for the operation of some of the dynamics that are central to globalisation, they undergo change that is difficult to register or name. This is one instantiation of what I call a process of incipient denationalisation. This partial, often highly specialised or at least particularised, denationalisation can also take place in domains other than that of economic globalisation, notably, the more recent developments in the human rights regime which increasingly make it possible for a plaintiff in a

given country to sue a firm²⁷ (and even a dictator) in that country's courts. Another instance is the use of human rights instruments to grant undocumented immigrants certain rights. Denationalisation is, thus, multivalent: it endogenises global agendas of many different types of actors, not only corporate firms and financial markets, but also human rights objectives.

The question for research then becomes: what is actually 'national' in some of the institutional components of states linked to the implementation and regulation of economic globalisation? The hypothesis here would be that some components of national institutions, even though formally national, are not national in the sense in which we have constructed the meaning of that term over the last hundred years. One of the roles of the state vis-à-vis today's global economy has been to negotiate the intersection of national law and foreign actors – whether firms, markets or supranational organisations. This raises a question as to whether there are particular conditions that make execution of this role in the current phase distinctive and unlike what it may have been in earlier phases of the world economy.

We need to understand more about the nature of this engagement than is represented by concepts such as deregulation. It is becoming clear that the role of the state in the process of deregulation involves the production of a series of instruments that grant foreign actors and international regimes rights to the territory of the state in a way that represents a rupture with the history of the last hundred years. This is also evident in the proliferation of specialised, often semi-autonomous regulatory agencies and the specialised crossborder networks they are forming which are taking over functions once enclosed in national legal frameworks.²⁸ One way of conceptualising this is to posit that these instruments produce new types of borders deep inside the territory of the national state. They do not shift the geographic line that demarcates the 'border' recognised in international treaties. But they do produce new borders and they do change the institutional apparatus that gives meaning to the geographic border.

Critical here is that processes that do not necessarily scale at the global level as such can be part of globalisation. These processes take place deep inside territories and institutional domains that have largely been constructed in national terms in much, though by no means all, of the world. What makes these processes part of globalisation, even though localised in national, indeed subnational settings, is that they involve transboundary networks and formations connecting or articulating multiple local or 'national' processes and actors.²⁹ Among these processes I include particular aspects of the work of states, such as specific monetary and fiscal policies critical to the constitution of global markets – which are thus being implemented in a growing number of countries as these become integrated into global markets.³⁰ Other instances are crossborder networks of activists engaged in specific localised struggles with an explicit or implicit global agenda, as is the case with many human rights and environmental organisations; non-cosmopolitan forms of global politics and imaginaries that remain deeply attached or focused on localised issues and struggles and yet are also part of global lateral networks containing multiple other such localised efforts. A particular challenge in the work of identifying these types of processes and actors as part of globalisation is the need to decode at least some of what continues to be experienced and represented as national.

Important to the argument in this article is the thesis that these types of nation-based practices and dynamics can be conceptualised as constitutive of global scalings we do not usually recognise as such. This brings to the fore internal and novel borderings produced in the encounter between a global process – whether economic, cultural, political or subjective – and existing thick national environments. This encounter can assume many different shapes and contents. It can be a highly charged event with multiple individual, institutional and/or structural contestations, victories and retreats on each side. Or it can be a highly specialised insertion noticeable directly only within that specialised domain, as might be the case with some of the new standards in finance and accounting.

The research needed to get at these types of issues can vary enormously depending on the content (political, economic, cultural or subjective) and on location (institutional, structural, demographic, subjective, and so on). Yet cutting across this variability is the need to distinguish: a) the various scales constituted through global processes, ranging from supranational and global to subnational and translocal;³¹ and b) the specific sites of a given object of study in this multi-scalar globalisation.³² Geography more than any other of the social sciences today has contributed to a critical stance toward scale, recognising the historicity of scales and resisting the reification of the national scale so present in most of social science.

This in turn brings up a critical conceptual task: the need to decode particular aspects of what is still represented or experienced as ‘national’ which may in fact have shifted away from what had historically been considered or constituted as national. This is in many ways a research and theorisation logic that is the same as that developed in the economics of global city studies. But, while a growing number of scholars today have come around to recognise and code global city functions as part of the global, this cannot be said for a range of other subnational instances of the global still coded and represented as local and national.

Three types of cases serve to illustrate some of the conceptual, methodological and empirical issues in these types of studies aimed at detecting the global inside the national, signalling the existence of novel types of borderings. One of these concerns the role of place in many of the circuits constitutive of economic and political globalisation. A focus on places allows us to unbundle globalisation in terms of the multiple specialised crossborder circuits on which different types of places are located.³³ Yet another example is that of global cities as subnational places where multiple global circuits intersect and thereby position these cities on several structured crossborder geographies, each typically with distinct scopes and constituted in terms of distinct practices and actors.³⁴ This type of analysis produces a different picture of globalisation from one centred on global firms and markets, international trade, or the pertinent supranational institutions. It is not that one type of focus is better than the other, but rather that the latter focus, the most common focus by far, is not enough.

A second type of case, partly involved in that described above, is the role of the new interactive technologies in repositioning the local, thereby inviting us to a critical examination of how we conceptualise the local. Through these new technologies a financial services firm becomes a micro-environment with continuous global span. But so do resource-poor organisations or households; they can also

become micro-environments with global span, as might be the case with activist organisations. These micro-environments can be oriented to other such micro-environments located far away, thereby destabilising both the notion of context which is often imbricated with that of the local and the notion that physical proximity is one of the attributes or markers of the local. A critical reconceptualisation of the local along these lines entails at least a partial rejection of the notion that local scales are inevitably part of nested hierarchies of scale running from the local to the regional, the national and the international.³⁵

A third type of case concerns a specific set of interactions between global dynamics and particular components of national states. The crucial conditionality here is the partial embeddedness of the global in the national, of which the global city is perhaps emblematic. My main argument here is that, in so far as specific structururations of the global inhabit what has historically been constructed and institutionalised as national territory, this engenders a variety of negotiations. One set of outcomes evident today is what I describe as an incipient, highly specialised and partial denationalisation of specific components of national states.

In all three instances the question of scaling takes on very specific contents in that these are practices and dynamics that pertain to the constituting of the global, yet are taking place at what has been historically constructed as the scale of the national. With few exceptions, most prominently among which is a growing scholarship in geography, the social sciences have not had critical distance, that is, historicised the scale of the national. The consequence has been a tendency to take it as a fixed scale, reifying it, and, more generally, to neutralise the question of scaling, or at best to reduce scaling to a hierarchy of size. Associated with this tendency is also the often uncritical assumption that these scales are mutually exclusive, most pertinently for my argument here, that the scale of the national is mutually exclusive with that of the global. A qualifying variant which allows for mutual imbrications, though of a very limited sort, can be seen when scaling is conceived of as a nested hierarchy.³⁶

National borders and subnational borderings

The three cases described above go against those assumptions and propositions that are now often captured through the concept of methodological nationalism. But they do so in a distinct way. Crucial to the existing body of work representing a critique of methodological nationalism is the need for transnationalism: the nation as container category is inadequate given the proliferation of dynamics and formations that go beyond the nation-state.³⁷ What I am focusing on here is a set of reasons other than transnationalism for supporting the critique of methodological nationalism: the fact of multiple and specific structururations of the global inside what has historically been constructed as national. In many ways I focus on the other end of the transnationalism dynamic: I look inside the national. Along these lines, I find that Xiangming Chen's recent work also captures this particular combination.³⁸ Further, I posit that, because the national is highly institutionalised and thick, structururations of the global inside the national entail a partial, typically highly specialised and specific denationalisation of particular components of the national. This approach, then, is a critique of methodological

nationalism, but its starting point is not exclusively predicated on the fact of transnationalism, rather bringing in the possibility of internal denationalisation.

One analytic pathway into this bundle of empirical and conceptual issues is to disaggregate state-centred border regimes and to locate a given site in a global web of bordered spaces. One of the key analytic distinctions to be made is that between the ongoing presence of border regimes centred in the state and the interstate system and the emergence of the types of novel borderings associated with the multiplication of subnational global scalings discussed above.

State-centred border regimes have also undergone significant change even as they remain part of older formalisations, such as international treaties. Globalisation, neoliberal supranational regimes and new forms of private authority have all affected old border regimes.³⁹ The outcome is that we see a great diversity of institutional locations even among state-centred regimes. For instance, cross-border flows of capital will require a sequence of interventions that move deep inside the national institutional apparatus, and also differ in character from that of traded goods, for example. The actual geographic border crossing is part of the crossborder flow of goods, but not necessarily of capital, except if actual cash is being transported. Each border-control intervention point can be conceived of as one site in a chain of locations. In the case of traded goods these might involve a pre-border inspection or certification site. In the case of capital flows the chain of locations will involve banks, stock markets and electronic networks. The financial and the trade bordering functions each contain specific institutional and geographic locations, increasingly including some internal to the nation-state. The geographic borderline is but one point in the chain; institutional points of border control intervention can form long chains inside the country.

One image we might use to capture this notion of multiple locations is that the sites for the enforcement of border regimes range from banks to bodies. When a bank executes the most elementary money transfer to another country, the bank is one of the sites for border-regime enforcement. A certified good represents a case where the object itself crossing the border is one of the sites for enforcement: the emblematic case is a certified agricultural product. But it also encompasses the case of the tourist carrying a tourist visa and the immigrant carrying the requisite certification. Indeed, in the case of immigration, it is the body of the immigrant herself which is both the carrier of much of the regime and the crucial site for enforcement; and in the case of an unauthorised immigrant, it is, again, the body of the immigrant that is the carrier of the violation of the law and of the corresponding punishment (such as detention or expulsion).

A direct effect of globalisation, especially corporate economic globalisation, has been to create increasing divergence among different border regimes. In some cases these divergences are the effect of enormous specialisation and remain rather obscure; in other cases they are quite elementary. One familiar instance that captures some of this is the lifting of border controls on a growing variety of capital, services and information flows alongside ongoing and even strengthened closure in other border regimes, for example the migration of low-wage workers. We are also seeing the construction of specific 'borderings' to contain and govern emerging, often strategic or specialised, flows that cut across traditional national borders, as is the case, for instance, with the new

regimes in the North American Free Trade Association and the General Agreement of Tariffs and Trade for the crossborder circulation of high-level professionals.⁴⁰ Where in the past these professionals may have been part of a country's general immigration regime, now we have an increasing divergence between the latter and the specialised regime governing professionals.

In what follows I examine briefly some of the key analytic distinctions we might use in researching these emergent questions about national territory, old borders and novel types of borderings inside national territory. First, I discuss what it might mean to study a subnational site as part of global processes and hence to recognise the formation of novel types of bordering. Next, and to conclude, I focus on the larger issues of territory and state authority raised at the beginning of this article by examining some novel types of bordering dynamics as these intersect with the national territorial authority of the state, particularly the destabilised meaning of conventional borders under the impact of multiple forms of globalisation.

Positioning a site in a global web of borders

If we were to consider what might be involved in locating an economic site in a global web of 'borders' a first step in my research practice is to conceive of the global economy as constituted through: a) a set of specialised/partial circuits, and b) multiple, often overlapping, space economies. The question then becomes how a given area is articulated with various circuits and space economies.

The articulation of a site with global circuits can be direct or indirect, and part of long or short chains. An instance of a direct articulation would be a site located on a specialised global circuit, as might be the case with export forestry, a mine, offshore manufacturing or offshore banking. An instance of an indirect articulation might be a site located on national economic circuits, such as a site for the production of processed consumer goods where exports happen through multiple complex national and foreign urban markets. The chains of transactions involved in these different types of products are likely to be shorter in the case of extractive industries than in manufacturing, especially in consumer goods where export/import handlers and multiple distributors are likely to be part of the chain.

As for the second element, the space economies involved, a first critical issue is that a given site can be constituted through one or more space economies. A forestry site or an agricultural site is likely to be constituted through fewer space economies than a financial centre or a manufacturing complex. Secondly, none, only one, or several might be global space economies. It seems to me crucial to disaggregate a site along these lines, and not reify an area. For instance, the space economy even of a sparsely populated area, such as a forestry site, can be far more complex than common sense might suggest: even if it is located on only one global circuit: such as an international logging company that has contracted for all the wood produced in the site. That logging multinational's acquisition of the wood requires it also to satisfy a great mix of requirements typically executed via specialised corporate services, notably accounting and law, and it is likely to require financing, in turn subject to national regulations.

We might then say that the forestry site is actually constituted through several space economies, and at the least two: logging and specialised corporate services. But it is likely to be part of a third space economy, that of global financial markets. For instance, if the logging company is part of a stock exchange listing, it may well have 'liquefied' the logs by converting them into derivatives that can then circulate as financial instruments in the global capital market.⁴¹ This insertion in global financial markets is to be distinguished from the financing of, in this case, the actual work of logging; it has, rather, to do with the capabilities of global finance today to liquefy even the most immobile material good, such as real estate, so it may circulate as a profit-making financial instrument in the global capital market, in addition to the profit-making potential of the material good itself.

There is a kind of analytics that emerges out of the particularity of this discussion of state-centred border regimes and the empirical work of locating a site that is part of a global web of such state-centred border regimes. These are analytics that aim at disaggregating the border function into the character, locations and sites for enforcement of a given border regime. The effect is to make legible the multiple territorial, spatial and institutional dimensions of 'the border'.

Disembedding the border from its national encasements

A critical and growing component of the broader field of forces within which states operate today is the proliferation of specialised types of private authority. These include the expansion of older systems, such as commercial arbitration, into new economic sectors, and they include new forms of private authority that are highly specialised and oriented towards specific economic sectors, such as the system of rules governing the international operations of large construction and engineering firms.

One outcome of key aspects of these various trends is the emergence of a strategic field of operations that represents a partial disembedding of specific bordering operations from the broader institutional world of the state geared to national agendas. It is a fairly rarefied field of crossborder transactions aimed at addressing the new conditions produced and demanded by economic globalisation. The transactions are strategic, cut across borders, and entail specific interactions among private actors and, some times, government agencies or officials. They do not entail the state as such, as in international treaties, for these transactions consist of the operations and aims of private actors – in this case, mostly firms and markets aiming at globalising their operations. These are transactions that cut across borders in that they concern the standards and regulations imposed on firms and markets operating globally; in so doing, these transactions push towards convergence at the level of national regulations and law aimed at creating the requisite conditions for globalisation.

There are two distinct features about this field of transactions that lead me to posit that we can conceive of it as a disembedded space that is in the process of getting structured. One of these features is that, while operating in familiar settings – the state and interstate system for officials and agencies of governments and the supranational system and the 'private sector' for non-state economic

actors – the practices of these agents are constituting a distinct field that assembles bits of territory, authority and rights into new types of specialised and typically highly particularised structures. The field of practices getting constituted cannot be confined to the institutional world of the interstate system. The second feature is the proliferation of rules that begin to assemble into partial, specialised systems of law. Here we enter a whole new domain of private authorities – fragmented, specialised, increasingly formalised, but not running through national law *per se*. The implications of this proliferation of specialised, mostly private or supranational systems of law, is that they signal the destabilising of conventional understandings of national borders.

One perhaps extreme instance that captures current processes that disembed the national border from its national encasements is the formation of multiple, albeit very partial, global law systems.⁴² Over the last two decades we have seen a multiplication of crossborder systems of rule that evince variable autonomy from national law. At one end are systems clearly centred in what is emerging as a transnational public domain and, at the other, systems that are completely autonomous and are largely private. Some scholars see in this development an emergent global law. We might conceive of it as a type of law that is disembedded from national law systems. At the heart of the notion of something akin to global law lies the possibility of a law that, firstly, is not centred in national law, unlike international law today, and, secondly, that goes beyond the project of harmonising the different national laws, which is the case with much of the supranational system developed to address economic globalisation, environmental issues and human rights. There is, in fact, a rapid growth over the last decades of such autonomous, highly differentiated systems of rules, some connected to the supranational system but not centred in national law, and others privatised and autonomous.

There is disagreement as to the notion itself of global law. Some scholars have long argued that there is no such entity as global law, though the specifics of their analysis⁴³ might accommodate its presence if they were writing today.⁴⁴ Whatever the approach, these scholars prefer to conceive of ‘global law’ as a site where multiple competing national systems interact. For instance, Dezalay and Garth note that the ‘international’ is itself constituted largely out of a competition among national approaches.⁴⁵ Thus the international emerges as a site for regulatory competition among essentially national approaches, whatever the issue whether it be environmental protection, constitutionalism or human rights.⁴⁶ The project *vis-à-vis* the global corporate economy, for example, is then one of harmonising differences through the specialised branch of law called conflicts law or through force. Much of the scholarship on global governance comes from this type of perspective.

For other scholars,⁴⁷ there is an emerging global law centred in the development of autonomous partial regimes. The project on ‘International Courts and Tribunals’ has identified approximately 125 international institutions, in which independent authorities reach final legal decisions.⁴⁸ These range from those in the public domain, such as human rights courts, to those in the private sector. They function through courts, quasi-courts and other mechanisms for settling disputes, such as international commercial arbitration.⁴⁹ They include the international maritime court, various tribunals for reparations, international criminal

courts, hybrid international-national tribunal instances, trade and investment judicial bodies, regional human rights tribunals and convention-derived institutions, as well as other regional courts, such as the European Court of Justice, the European Free Trade Association Court and the Benelux Court.⁵⁰ The number of private systems has grown sharply in the last decade.

The formation of these novel global regimes is not premised on the integration, harmonisation or convergence of national legal orders. They also produce, in this process, novel types of borderings, notably through the juridification of the regime; this, then, often entails an insertion of a distinctly bordered space into a national territory marked by its own specific bordering – the conventional border. In this sense, then, these new regimes go beyond the type of international economic law, such as those arising out of the Trade-related Intellectual Property Rights (TRIPS) agreements of the World Trade Organisation involving the community of member states, which requires states to institute particular regulations in their national legal systems. Most prominently, Teubner sees a multiplication of sectoral regimes that is an overlay on national legal systems.⁵¹ The outcome is a foundational transformation of the criteria for differentiating law; not the law of nations, nor the distinction between private and public, but rather the recognition of multiple specialised segmented processes of juridification, which today are largely private. As he put it, ‘societal fragmentation impacts upon law in a manner such that the political regulation of differentiated societal spheres requires the parcelling out of issue-specific policy-arenas, which, for their part, juridify themselves’.⁵² In this perspective, global law is segmented into transnational legal regimes which define the ‘external reach of their jurisdiction along issue-specific rather than territorial lines, and which claim a global validity for themselves’.⁵³

To take a concrete case, a type of private authority that illustrates some – though by no means all – of these issues can be seen in the so-called *lex constructionis*. This case combines: a) the notion of an autonomous global system of rules internal to an economic sector with b) the fact of a few large firms having disproportionate control over a sector which thereby facilitates the making of such private systems of rules. It is a combination of rules and standard contracts for crossborder construction projects. The sector is dominated by a small number of well organised private associations: the International Federation of Consulting Engineers, the International European Construction Federation, the British Institution of Civil Engineers, the Engineering Advancement Association of Japan and the American Institute of Architects. In addition, the World Bank, the United Nations Commission on International Trade Law, the International Institute for the Unification of Private Law and certain international law firms also contribute to developing legal norms for how the sector is meant to function. Because of the nature of large construction and engineering projects, this case also illuminates the ways in which an autonomous system of rules and the type of power possessed by large global firms does not mean that these firms can escape all outside constraints. Indeed, these firms increasingly ‘need’ to address environmental protection. The way this issue gets handled in the *lex constructionis* is also emblematic of other such autonomously governed sectors; largely a strategy of deference that aims at externalising the responsibility for regulating the

environmental issues arising out of large-scale construction projects. The externalising is to the 'extra-contractual' realm of the law of the host-state, using 'compliance' provisions that are today part of the standard contract.

These and other such transnational institutions and regimes do signal a shift in authority from the public to the private when it comes to governing the global economy. They also contain a shift in the capacity for norm-making and, in that regard, raise questions about changes in the relation between state sovereignty and the governance of global economic processes. International commercial arbitration is basically a private justice system, credit rating agencies are private gate-keeping systems, and the *lex constructionis* is a self-regulatory regime in a major economic sector dominated by a limited number of large firms. Along with other such institutions, they have emerged as important governance mechanisms whose authority is not centred in the state. Each is a bordered system – a key conditionality for its effectiveness and validity. But the bordering capability is not part of national state borders.

Conclusions

State sovereignty is usually conceived of as a monopoly of authority over a particular territory. Today, it is becoming evident that national territories may remain demarcated along the same old geographic borderlines, but that novel types of borderings resulting from globalisation are increasingly present inside national territory. Sovereignty remains as a systemic property, yet its institutional insertion and its capacity to legitimate and absorb all legitimating power have become unstable. The politics of contemporary sovereignties is far more complex than notions of mutually exclusive territories can capture.

The question of a bordered exclusive territory as a parameter for authority and rights has today entered a new phase. While the exclusive territorial authority of the state remains prevalent, the constitutive regimes are today less absolute than they were once meant to be. In this sense, then, state-centred border regimes – whether open or closed – remain foundational elements in our geopolitics, but they coexist with a variety of other bordering dynamics and capabilities.

This does not mean that states are simply losing some putative battle against global forces. In so far as the state has historically had the capability to encase its territory through administrative and legal instruments, it also has the capability to change that encasement – for instance, deregulate its borders and open up to foreign firms and investment. But, I argued here, this comes with some foundational changes, particularly the partial denationalising of what was once national. This in turn points to the formation of novel types of bordering in the encounter of the global and the national inside national territory.

One critical aspect of this emergent research agenda is to study the global not only in terms of that which is explicitly global in scale, but also in terms of practices and institutions that scale at subnational levels. Further, it entails recognising that many of the globally scaled dynamics, such as the global capital market, actually are partly embedded in subnational sites and move between these differently scaled practices and organisational forms. For instance, the global capital market is constituted both through electronic markets with global span and

through locally embedded conditions, such as financial centres and all they entail, from infrastructure to systems of trust.

A focus on such subnationally based processes and dynamics of globalisation requires methodologies and theorisations that engage not only global scalings but also subnational scalings *as* components of *global* processes, thereby destabilising older hierarchies of scale and conceptions of nested scalings. Studying global processes and conditions that get constituted subnationally has some advantages over studies of globally scaled dynamics; but it also poses specific challenges. It does make possible the use of longstanding research techniques, from quantitative to qualitative, in the study of globalisation. It also gives us a bridge for using the wealth of national and subnational data-sets, as well as specialised scholarships such as area studies. Both types of studies, however, need to be situated in conceptual architectures that are not quite those held by the researchers who originally generated these research techniques and data-sets, since their efforts have mostly had little to do with globalisation.

Notes

1. For a summary and attempted synthesis of these viewpoints, see John M. Hobson & M. Ramesh, 'Globalisation Makes of States What States Make of It: Between Agency and Structure in the State/Globalisation Debate', *New Political Economy*, Vol. 7, No. 1 (2002), pp. 5–22.
2. For example, Peter Taylor, 'World Cities and Territorial States under Conditions of Contemporary Globalisation (1999 Annual Political Geography Lecture)', *Political Geography*, Vol. 19, No. 1 (2000), pp. 5–32; Robert Jessop, 'Reflections on globalization and its illogics', in: Kris Olds *et al.* (eds), *Globalization and the Asian Pacific: Contested Territories* (Routledge, 1999), pp. 19–38; Ulrich Beck, *What is Globalization?* (Polity, 2000); and Neil Brenner, *State Spaces* (Oxford University Press, 2003).
3. For a series of articles with examples of varying theses, see *New Political Economy*, Vol. 5, No. 3 (2000).
4. For a typical example, see Isidro Morales, 'Mexico's Post-NAFTA Privatisation Policies: The Case of the Petrochemical Sector', *New Political Economy*, Vol. 2, No. 3 (1997), pp. 427–51.
5. For example, Linda Weiss, 'The State-augmenting Effects of Globalisation', *New Political Economy*, Vol. 10, No. 3 (2005), pp. 345–53.
6. Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization*, The 1995 Columbia University Leonard Hastings Schoff Memorial Lectures (Columbia University Press, 1996), chs 1 and 2; and Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton University Press, forthcoming 2006).
7. See also Sassen, *Territory, Authority, Rights*.
8. For an example, see Martin Lodge & Lindsay Stirton, 'Regulatory Reform in Small Developing States: Globalisation, Regulatory Autonomy and Jamaican Telecommunications', *New Political Economy*, Vol. 7, No. 3 (2002), pp. 415–22.
9. For example, Stephen Krasner, 'Globalisation and the state', in: Paul Edwards & Keith Sisson (eds), *Contemporary Debates in International Relations* (Ohio University Press, 2004), pp. 60–82; Louis Pauly, 'Global finance, political authority, and the problem of legitimation,' in: Thomas J. Biersteker & Rodney Bruce Hall (eds), *The Emergence of Private Authority and Global Governance* (Cambridge University Press, 2002), pp. 67–90; Eric Helleiner, 'Sovereignty, territoriality and the globalisation of finance', in: David Smith, D. Solinger & S. Topik (eds), *States and Sovereignty in the Global Economy* (Routledge, 1999), pp. 158–67; Paul Hirst & Grahame Thompson, *Globalization in Question: The International Economy and the Possibilities of Governance* (Polity, 1996); and Christian Joppke (ed.), *Challenge to the Nation-State* (Oxford University Press, 1998).
10. For example, Philip G. Cerny, *The Changing Architecture of Politics* (Sage, 1990); Philip G. Cerny, 'Structuring the political arena: public goods, states and governance in a globalizing world', in: Ronen Palan (ed.), *Global Political Economy: Contemporary Theories* (Routledge, 2000), pp. 21–35; Susan Strange, *The Retreat of the State: The Diffusion of Power in the World Economy* (Cambridge University

- Press, 1996); Claire A. Cutler, Virginia Haufler & Tony Porter (eds), *Private Authority in International Affairs* (SUNY Press, 1999); Yale H. Ferguson & R. J. Barry Jones (eds), *Political Space: Frontiers of Change and Governance in a Globalising World* (SUNY Press, 2002); Ken Dark, 'The informational reconfiguring of global geopolitics', in: Ferguson & Jones, *Political Space*, pp. 61–86; and Ronen Palan, 'Offshore and the institutional environment of globalization', in: Ferguson & Jones, *Political Space*, pp. 211–24.
11. For what is probably the most comprehensive mapping of the main strands in the scholarship on globalisation and the state, see David Held, Anthony McGrew, David Goldblatt & Jonathan Perraton, *Global Transformations: Politics, Economics and Culture* (Polity, 1999), who categorise the two major emerging strands as 'hyperglobalists', who posit that national states are becoming weak and are on their way out, and 'transformationists', who contend that globalisation has brought about significant changes in state authority and the work of states.
 12. Beyond issues pertaining to the global economy, the question of state participation is also at the heart of a far broader debate about globalisation and the state. There is an older scholarship on world-order systems, such as Richard Falk, *Explorations at the Edge of Time: The Prospects for World Order* (Temple University Press, 1992), and 'The making of global citizenship', in: J. Brecher & T. Costello (eds), *Global Visions: Beyond the New World Order* (South End Press, 1993), recently invigorated by debates about cosmopolitanism (see David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press, 1995); and Held et al., *Global Transformations*). It examines and theorises the possibilities of transcending nationally oriented state authority and instituting world-level institutional orders. This literature often includes partial world-level orders such as the international human rights regime (see Alison Brysk (ed.), *Globalization and Human Rights* (University of Berkeley Press, 2002)), or certain features of international environmental treaties (see Ronnie Lipschutz & Judith Meyer, *Global Civil Society and Global Environmental Governance: The Politics of Nature from Place to Planet* (SUNY Press, 1996)), and, quite prominently, discussions about the possibility of a global civil society (see Held et al., *Global Transformations*; and A. Annheer, M. Glasius & M. Kaldor (eds), *Global Civil Society Yearbook 2002* (Oxford University Press, 2002)). See also note 19 below.
 13. A growing literature that often overlaps with particular parts of the above cited strands in the scholarship emphasises the relocation of national public government functions to private actors both within national and transnational domains (see Cutler et al., *Private Authority in International Affairs*; and Alfred C. Aman Jr, 'The Globalising State: A Future-Oriented Perspective on the Public/Private Distinction, Federalism, and Democracy', *Vanderbilt Journal of Transnational Law*, Vol. 31, No. 4 (1998), pp. 769–870). For a state of the art elaboration on the rise of private authority, see generally Thomas J. Biersteker, Rodney Bruce Hall & Craig N. Murphy (eds), *Private Authority and Global Governance* (Cambridge University Press, 2000). For the emergence of crossborder governance mechanisms, see generally Ferguson & Jones, *Political Space*.
 14. Sassen, *Territory, Authority, Rights*, ch. 4.
 15. A good examination of these issues as they materialise in specific institutional settings can be found in Aman, 'The Globalising State'. An excellent collection of essays that seeks to capture these types of dynamics can be found in Michael Likosky (ed.), *Transnational Legal Processes* (Butterworth's LexisNexis Group, 2002).
 16. Sassen, *Territory, Authority, Rights*, chs 4 and 5.
 17. Perhaps the best known, though not necessarily the most precise, authors here are Kenichi Ohmae, *The End of the Nation-State: The Rise of Regional Economies* (Free Press, 1995); Walter B. Wriston, *The Twilight of Sovereignty: How the Information Revolution is Transforming Our World* (Scribner 1992); Stephen J. Kobrin, 'The MAI and the Clash of Globalizations', *Foreign Policy*, No. 112 (1998), pp. 97–109; and Benjamin J. Cohen, 'Electronic Money: New Day or False Dawn?', *Review of International Political Economy*, Vol. 8, No. 2 (2001), pp. 197–225.
 18. There is today a growing literature that interprets deregulation and privatisation as the incorporation by the state of its own shrinking role; in its most formalised version this position emphasises the state's constitutionalising of its own diminished role. See Kevin R. Cox (ed.), *Spaces of Globalization: Reasserting the Power of the Local* (Guilford, 1997); Leo Panitch, 'Rethinking the role of the state in an era of globalization', in: James H. Mittelman (ed.), *Globalization: Critical Reflections* (Lynne Rienner, 1996), pp. 83–116; James H. Mittelman, *The Globalization Syndrome: Transformation and Resistance* (Princeton University Press, 2000); and Stephen Gill, 'Globalization, democratization, and the politics of indifference', in: Mittelman, *Globalization*, pp. 205–28.

19. Perhaps the best example is Helleiner, 'Sovereignty, territoriality and the globalisation of finance', who examines the regulatory changes brought on by the emergence of global financial systems and shows how states remain as key actors. See also note 12 above.
20. A good source in this regard is Edward D. Mansfield & Richard Sisson, *The Evolution of Political Knowledge* (Ohio State University Press 2003); which contains papers by major scholars in international relations addressing key issues about the state and the current features of the interstate system, with responses by critics from other disciplines.
21. For a development of some of these issues, see Saskia Sassen, 'Territory and Territoriality in the Global Economy', *International Sociology*, Vol. 15, No. 2 (2000), pp. 372–93. In this context, I find interesting parallels in a specific type of legal scholarship focused on the construction of jurisdictions and the location of particular issues in jurisdictions that may today be less and less adequate. See, for instance, George A. Bermann, 'International regulatory cooperation and US federalism', in: G. A. Bermann, M. Herdegen & P.L. Lindseth (eds), *Transatlantic Regulatory Cooperation: Legal Problems and Political Prospects* (Oxford University Press, 2002), pp. 373–84; see also the extraordinary analysis in Judith Resnik, 'Categorical Federalism: Jurisdiction, Gender, and the Globe', *The Yale Law Journal*, Vol. 111, No. 3 (2001), pp. 619–80.
22. However, these dynamics can also be present when privatisation and deregulation concern native firms and investors – *pace* the fact that, in much of the world, privatisation and deregulation have been constituted through the entry of foreign investors and firms.
23. Several scholars have focused on the nature of this engagement: see Strange, *The Retreat of the State*; Cerny, 'Structuring the political arena'; Dark, 'The informational reconfiguring'; Jan Aart Scholte, 'Global Capitalism and the State', *International Affairs*, Vol. 73, No. 3 (1997), pp. 427–52; Leo Panitch & Colin Leys (eds), *Global Capitalism Versus Democracy* (Merlin Press & Monthly Review Press, 1999); Paul N. Doremus, William W. Keller, Louis W. Pauly & Simon Reich, *The Myth of the Global Corporation* (Princeton University Press, 1999); and Boris Kagarlitsky, 'The challenge for the left: reclaiming the state', in: Panitch & Leys, *Global Capitalism Versus Democracy*, pp. 294–313. One way of organising the major issues is to ask whether the role of the state is simply one of reducing its authority – for example, as suggested with terms such as deregulation and privatisation, and generally 'less government' – or whether it also requires the production of new types of regulations, legislative items, court decisions; in brief, the production of a whole series of new 'legalities'. I use this term to distinguish this production from 'law' or 'jurisprudence'. See Sassen, *Losing Control?*, ch. 1.
24. Among the issues raised by this type of analysis are the increased autonomy and influence of a whole variety of types of processes and actors, including non-state actors. The literature on non-governmental organisations, including transnational ones, and the associated forms of activism, has also generated a series of interesting insights into the changed position of states in a context of multiple globalisation. See, for example, Margaret Keck & Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998); Robert O'Brien, Anne Marie Goetz, Jan Aart Scholte & Marc Williams, *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements* (Cambridge University Press, 2000); and David Bollier, 'Reinventing Democratic Culture in the Age of Electronic Networks', available at <http://www.netaction.org/bollier>. For a critical account that partly rejects the notion that these non-state actors actually represent a politics that undermines existing forms of authority, including that of the state, see André Drainville, 'Left internationalism and the politics of resistance in the New World Order', in: David A. Smith & Josef Borocs (eds), *A New World Order: Global Transformation in the Late Twentieth Century* (Greenwood Press, 1995), pp. 217–38. I would also include here a variety of emergent global networks that are fighting equally emergent global agents such as trafficking gangs. See Global Survival Network, 'Crime and Servitude: An Exposé of the Traffic in Women for Prostitution from the Newly Independent States', available at <http://www.witness.org/>; and Coalition to Abolish Slavery and Trafficking, 'Resources: Factsheet', available at <http://www.castla.org/news/resources.htm>. For a general review of these types of organisations, see Sassen, 'Territory in the Global Economy'. Along these lines a new set of concrete instances has come about with the 11 September 2001 attack on the World Trade Center, that is, the use by international organised terrorism of the global financial system and the international immigration regime. See, for a variety of analyses, Craig J. Calhoun, Paul Price & Ashley S. Timmer, *Understanding September 11* (New Press 2002); and Saskia Sassen, 'Spatialities and Temporalities of the Global', *Public Culture* (Millennium Issue on Globalization), Vol. 12, No. 1 (2000), pp. 215–32.
25. Seen from the perspective of firms and investors operating transnationally, the objective is to enjoy the protections traditionally exercised by the state in the national realm of the economy for national firms, notably

- guaranteeing property rights and contracts. How this gets done may involve a range of options. See Cutler *et al.*, *Private Authority in International Affairs*; and Biersteker & Hall, *The Emergence of Private Authority and Global Governance*.
26. Two very different bodies of scholarship which develop lines of analysis that can help in capturing some of these conditions are represented by the work of James Rosenau, particularly his examination of the domestic 'frontier' inside the national state (James N. Rosenau, *Along the Domestic-Foreign Frontier: Exploring Governance in a Troubled World* (Cambridge University Press, 1997)), and by the work of R. B. J. Walker problematising the distinction inside/outside in international relations theory (R. B. J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge University Press, 1993)). An interesting variant on this subject is Thomas Callaghy, Ronald Kassimir & Robert Latham (eds), *Intervention and Transnationalism in Africa: Global-Local Networks of Power* (Cambridge University Press, 2001), who examine the proliferation of global non-state-centred networks in the case of Africa.
27. See Beth Stephens, 'Corporate Liability: Enforcing Human Rights Through Domestic Litigation', *Hastings International & Comparative Law Review*, Vol. 24, No. 3 (2002), pp. 401–15.
28. We can see this in particular features of a variety of domains; for instance, competition policy (Edward O. Graham & J. D. Richardson, *Global Competition Policy* (Institute for International Economics, 1997); Brian Portnoy, *Constructing Competition: The Political Foundations of Alliance Capitalism*, unpublished Ph.D. dissertation, University of Chicago, Chicago, Illinois, 2000)); specific aspects of international business collaboration (John Dunning, *Alliance Capitalism and Global Business* (Routledge, 1997); Indiana Journal of Global Legal Studies, *Symposium: The Internet and the Sovereign State: The Role and Impact of Cyberspace on National and Global Governance*, Vol. 5, No. 2 (1998)); in networks among members of the judiciary (Anne-Marie Slaughter, *A New World Order* (Princeton University Press, 2004)); and, in a very different domain, the new opening among the top leadership in a growing number of unions to organising immigrants (Leah Haus, *Unions, Immigration, and Internationalization: New Challenges and Changing Conditions in the United States and France* (Palgrave, 2002)).
29. For example, Shaun Breslin, 'Decentralisation, Globalisation and China's Partial Re-engagement with the Global Economy', *New Political Economy*, Vol. 5, No. 2 (2000), pp. 205–26.
30. For more on states and global markets, see the collection of articles in *New Political Economy*, Vol. 8, No. 1 (2003).
31. For example, Taylor, 'World Cities and Territorial States'; Erik Swyngedouw, 'Neither global nor local: "globalization", and the politics of scale', in: Cox, *Spaces of Globalization*, pp. 137–66; Ash Amin & Nigel Thrift, *Globalization, Institutions and Regional Development in Europe* (Oxford University Press, 1994); M. Peter Smith & Luis E. Guarnizo, *Transnationalism from Below* (Transaction, 1998); Sanjeev Khagram, *Dams and Development: Transnational Struggles for Water and Power* (Cornell University Press, 2004); and Robert C. Smith, *Mexican New York: Transnational Lives of New Immigrants* (University of California Press, 2005).
32. For example, Doreen Massey, 'Politics and space/time', in: M. Keith & S. Pile (eds), *Place and the Politics of Identity* (Routledge, 1993), pp. 141–61; Richard Howitt, 'A World in a Grain of Sand: Towards a Reconceptualisation of Geographical Scale', *Australian Geographer*, Vol. 24, No. 1 (1993), pp. 33–44; and Andrew Jonas, 'The Scale Politics of Spatiality', *Environment and Planning D: Society and Space*, Vol. 12, No. 3 (1994), pp. 257–64.
33. Elsewhere I examine the emergence of forms of globality centred on localised struggles and actors that are part of crossborder networks; this is a form of global politics that runs not through global institutions but through local ones. See Saskia Sassen, 'Electronic markets and activist networks: the weight of social logics in digital formations', in: Robert Latham & Saskia Sassen (eds), *Digital Formations: IT and New Architectures in the Global Realm* (Princeton University Press, 2005). For a full development of this thesis, see Sassen, *Losing Control?*, chs 4 and 5.
34. For instance, at least some of the circuits connecting São Paulo to global dynamics are different from those of Frankfurt, Johannesburg or Bombay. Further, distinct sets of overlapping circuits contribute to the constitution of distinctly structured crossborder geographies. We are, for instance, seeing the intensifying of older hegemonic geographies, such as the increase in transactions among New York, Miami, Mexico City and São Paulo. See, for example, Sueli Schiffer Ramos, 'São Paulo: articulating a cross-border regional economy', in: Saskia Sassen (ed.), *Global Networks/Linked Cities* (Routledge, 2002), pp. 209–36; Christoff Parnreiter, 'The making of a global city: Mexico City', in: Sassen, *Global Network/Linked Cities*, pp. 145–82, as well as newly constituted geographies, such as the articulation of Shanghai with a rapidly growing

- number of crossborder circuits. See Felicity Rose Gu & Zilia Tang, 'Shanghai: reconnecting to the global economy', in: Sassen, *Global Networks/Linked Cities*, pp. 273–308.
35. For a critical examination along these lines, see Benedicte Bull & Morten Boas, 'Multilateral Development Banks as Regionalising Actors: The Asian Development Bank and the Inter-American Development Bank', *New Political Economy*, Vol. 8, No. 2 (2003), pp. 245–61.
36. In my early research on the global city I began to understand some of these questions of reified scales. Much of the literature on global and world cities has a critical appraisal of questions of scaling, but with important exceptions (Peter J. Taylor, 'World cities and territorial states: the rise and fall of their mutuality', in: P. J. Taylor & P. L. Knox (eds), *World Cities in a World-System* (Cambridge University Press, 1995), pp. 48–62; Neil Brenner, 'Global Cities, Global States: Global City Formation and State Territorial Restructuring in Contemporary Europe', *Review of International Political Economy*, Vol. 5, No. 2 (1998), pp. 1–37), this appraisal tends to be in embryo, undertheorised and not quite explicated. On the other hand, the scholarship on 'globalisation' recognises and theorises questions of scale but often remains attached to a notion of nested scalings (for example, Swyngedouw, 'Neither global nor local'). I find that among the literatures in geography that come closest in their conceptualisation, albeit focused on very different issues, to what I develop in this article are those on first-nation peoples' rights claiming. See Howitt, 'A World in a Grain of Sand'; Steven E. Silvern, 'Scales of Justice: Law, American Indian Treaty Rights and Political Construction of Scale', *Political Geography*, No. 18 (1999), pp. 639–68; and Claudia Notzke, 'A New Perspective in Aboriginal Nature Resource Management: Co-Management', *Geoforum*, Vol. 26, No. 2 (1995), pp. 187–209. Clearly, there is a particularly illuminating positioning of the issues in this case because from the outset there is: a) the coexistence of two exclusive claims over a single territory; and b) the endogeneity of both types of claims – that of the modern sovereign and that of the indigenous nation. In my case here in this article, it is the coexistence of the claim of the historical sovereign and the claim of the global as endogenised in the reconstituted sovereign. For a full development of this somewhat abstract statement, see Sassen, *Territory, Authority, Rights*.
37. For example, Taylor, 'World Cities and Territorial States'; and Beck, *What is Globalization?*.
38. Xiangming Chen, *As Borders Bend: Transnational Spaces on the Pacific Rim* (Rowman & Littlefield, 2005).
39. For example, Paul Williams & Ian Taylor, 'Neoliberalism and the Political Economy of the "New" South Africa', *New Political Economy*, Vol. 5, No. 1 (2000), pp. 21–41.
40. Sassen, *Losing Control?*, ch. 3; and Saskia Sassen, *Globalization and its Discontents* (New Press, 1998), ch. 4.
41. Finally, and I cannot resist, we might want to say that a spent, used-up, sparsely populated area – for instance, a completely logged forest, where the forest ceases to exist – represents an instance of 'dead land' on what may well continue to be very dynamic global circuits, such as the logging multinationals now operating in other sites, in the same or other countries. The point here is that one of the key articulations of that site remains that global logging circuit, and to keep a dead site on the circuits that caused its death is part of a critical social science. Why render it invisible?
42. For a fuller development, see Sassen, *Territory, Authority, Rights*, ch. 5.
43. For example, see Martin Shapiro, 'The Globalization of Law', *Indiana Journal of Global Legal Studies*, No. 1 (1993), pp. 37–64.
44. Shapiro in *ibid.* notes that there is not much of a regime of international law, either through the establishment of a single global lawgiver and enforcer or through a nation-state consensus. He also posits that, if there was, we would be dealing with an international rather than a global law. Nor is it certain that law has become universal – that is, that human relations anywhere in the world will be governed by some law, even if not by a law that is the same everywhere. Globalisation of law refers to a very limited, specialised set of legal phenomena, and Shapiro argues that it will almost always refer to North America and Europe, only sometimes to Japan and to some other Asian countries. There have been a few particular common developments and many particular parallel developments in law across the world. Thus, as a concomitant of the globalisation of markets and the organisation of transnational corporations, there has been a move towards a relatively uniform global contract and commercial law. This can be seen as a private law-making system where the two or more parties create a set of rules to govern their future relations. Such a system of private law-making can exist transnationally even when there is no transnational court.
45. Yves Dezalay & Garth Bryant, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press, 1996).
46. David Charny, 'Competition among Jurisdictions in Formulating Corporate Law Rules: An American Perspective on the "Race to the Bottom" in the European Communities', *Harvard International Law Journal*, Vol. 32, No. 2 (1991), pp. 423–56; and Joel Trachtman, 'International Regulatory Competition,

- Externalization, and Jurisdiction', *Harvard International Law Journal*, Vol. 34, No. 1 (1993), pp. 47–104. There are two other categories that may partly overlap with internationalisation as Americanisation, but are important to distinguish, at least analytically. One is multilateralism and the other is what John Ruggie has called multiperspectival institutions. See J. G. Ruggie, *Constructing the World Polity* (Routledge, 2000).
47. For example, Gunther Teubner, 'Societal constitutionalism: alternatives to state-centered constitutional theory', in: Christian Joerges, Inger-Johanne Sand & Gunther Teubner (eds), *Transnational Governance and Constitutionalism* (Hartford Publishing, 2004), pp. 3–29.
48. The Project on 'International Courts and Tribunals' (PICT) was founded in 1997 by the Center on International Cooperation (CIC), New York University, and the Foundation for International Environmental Law and Development (FIELD). From 2002 onwards, PICT has been a common project of the CIC and the Centre for International Courts and Tribunals, University College London. See <http://www.pict-pcti.org>
49. For example, see Roger P. Alford, 'The American Influence on International Arbitration', *Ohio State Journal on Dispute Resolution*, Vol. 19, No. 1 (2003), pp. 69–88.
50. PICT (Notation 4) has gathered good documentation on legal frameworks and explicatory literature; see, further, Diana Shelton, *Remedies in International Human Rights Law* (Oxford University Press, 1999); and on 'hybrid courts', see Laura Dickinson, 'The Promise of Hybrid Courts', *American Journal of International Law*, Vol. 97, No. 2 (2003), pp. 295ff.
51. Teubner, 'Societal constitutionalism'.
52. *Ibid.*
53. See Dirk Lehmkuhl, 'The Resolution of Domain Names vs. Trademark Conflicts: A Case Study on Regulation Beyond the Nation-State and Related Problems', *Zeitschrift Für Rechtssoziologie*, Vol. 23, No. 1 (2003), pp. 61–78.